

EXHIBIT 8

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

1

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

| | | |
|-------------------------|---|-------------------|
| CARNEGIE INSTITUTION OF |) | |
| WASHINGTON and M7D |) | |
| CORPORATION, |) | |
| Plaintiffs, |) | |
| |) | |
| vs. |) | Case No. |
| |) | 1:20-cv-00200 JSR |
| FENIX DIAMONDS LLC, |) | |
| |) | |
| Defendant. |) | |

- - -

Videotaped deposition of MICHAEL
CAPANO, Ph.D., taken pursuant to notice via
videoconference at 6121 Marigold Court, Whitestown,
Indiana, on Friday, October 23, 2020, at 9:01 a.m.,
before Lorraine B. Marino, Registered Diplomat
Reporter, Certified Realtime Reporter and Notary
Public.

- - -

HIGHLY CONFIDENTIAL

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

2

1 APPEARANCES: (via videoconference)

2 MATTHEW J. MOFFA, ESQ.
3 PERKINS COIE LLP
4 700 13th Street, NW - Suite 800
5 Washington, DC 20005
6 202-654-3316
7 mmoffa@perkinscoie.com
8 for Plaintiffs

9 DAVID AIRAN, ESQ.
10 LEYDIG, VOIT & MAYER, LTD.
11 Two Prudential Plaza - Suite 4900
12 180 North Stetson Avenue
13 Chicago, IL 60601
14 312-616-5600
15 dairan@leydig.com
16 for Defendant Fenix Diamonds

17 ALSO PRESENT: (via videoconference)

18 ANIA BILINSKA,
19 Videographer

20 - - -

21

22

23

24

25

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

6

1 THE VIDEOGRAPHER: Good morning. We 09:01:12
 2 are now going on the video record. The time is 09:01:12
 3 approximately 9:01 a.m. Today's date is Friday, 09:01:16
 4 October 23, 2020. This begins the video 09:01:21
 5 deposition of Dr. Michael Capano in the matter of 09:01:27
 6 Carnegie Institution of Washington vs. Fenix 09:01:32
 7 Diamonds, case No. 1:20-cv-00200-JSR. This 09:01:36
 8 deposition is being held remotely via Zoom video 09:01:50
 9 conference. 09:01:53

10 My name is Ania Bilinska. I am the 09:01:55
 11 videographer representing Henderson Legal 09:01:58
 12 Services. 09:01:59

13 Will counsel please state their 09:02:01
 14 appearances and affiliations for the record. 09:02:02

15 MR. AIRAN: Good morning. My name 09:02:06
 16 is David Airan, of the law firm Leydig, Voit & 09:02:07
 17 Mayer, and I represent the defendant in this 09:02:09
 18 action, Fenix Diamonds, LLC. 09:02:11

19 MR. MOFFA: This is Matthew Moffa, 09:02:15
 20 with Perkins Coie, representing plaintiffs. 09:02:16

21 THE VIDEOGRAPHER: The court 09:02:20
 22 reporter is Lorraine Marino, representing 09:02:21
 23 Henderson Legal Services, and will now swear in 09:02:24
 24 the witness. 09:02:27

25

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

7

| | | |
|----|---|----------|
| 1 | MICHAEL CAPANO, having been first | 09:02:32 |
| 2 | duly sworn, was examined and testified as | 09:02:33 |
| 3 | follows: | 09:02:33 |
| 4 | BY MR. AIRAN: | 09:02:44 |
| 5 | Q. Good morning, Dr. Capano. | 09:02:44 |
| 6 | A. Good morning. | 09:02:46 |
| 7 | Q. Can you please state your business address | 09:02:47 |
| 8 | for the record? | 09:02:49 |
| 9 | A. My business address, it depends on if you | 09:02:57 |
| 10 | are talking about my Purdue address or my address | 09:03:01 |
| 11 | affiliated with this action. | 09:03:05 |
| 12 | Q. Why don't we do both. Let's start with | 09:03:07 |
| 13 | the Purdue address. | 09:03:09 |
| 14 | A. It is 1205 West State Street, West | 09:03:11 |
| 15 | Lafayette, Indiana, 47907. | 09:03:17 |
| 16 | Q. And you mentioned another address? | 09:03:21 |
| 17 | A. That would be the 6121 Marigold Court, | 09:03:23 |
| 18 | Whitestown, Indiana. | 09:03:29 |
| 19 | Q. Have you ever been deposed before? | 09:03:32 |
| 20 | A. Yes, I have. | 09:03:35 |
| 21 | Q. Approximately how many times? | 09:03:36 |
| 22 | A. This is the third. | 09:03:39 |
| 23 | Q. And you were deposed earlier this week in | 09:03:44 |
| 24 | a related action? | 09:03:46 |
| 25 | A. Yes, sir, I was. | 09:03:47 |

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

77

1 MR. MOFFA: Objection; form. 11:04:08

2 Objection; asked and answered. 11:04:11

3 THE WITNESS: A monocrystal, which 11:04:14

4 is synonymous with single crystal, is larger in 11:04:16

5 size than the average crystallite size that you 11:04:24

6 see in Figure 7. 11:04:30

7 BY MR. AIRAN: 11:04:41

8 Q. I want to move ahead to page 36 of your 11:04:43

9 expert report. Let me know when you are there. 11:04:48

10 A. I am here. 11:04:58

11 Q. There is an image which is your Figure 10. 11:05:01

12 Do you see that? 11:05:03

13 A. Yes. 11:05:06

14 Q. And that shows the dark region indicating 11:05:08

15 polycrystalline growth along the edges; is that 11:05:12

16 correct? 11:05:14

17 A. That is correct. 11:05:16

18 Q. Do you agree that that dark region is 11:05:18

19 polycrystalline material? 11:05:20

20 A. I agree that that material around the edge 11:05:24

21 is polycrystalline material. 11:05:27

22 Q. Did you physically inspect it? 11:05:31

23 A. No. 11:05:37

24 Q. The scientific literature consistently 11:05:42

25 refers to that black material that forms on the 11:05:44

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

78

1 edges as polycrystalline material; is that fair? 11:05:46

2 MR. MOFFA: Objection; form. 11:05:50

3 Objection; calls for speculation. 11:05:52

4 THE WITNESS: What type of material 11:05:56

5 are you referring to? 11:05:57

6 BY MR. AIRAN: 11:05:59

7 Q. That dark region as shown in your Figure 11:06:00

8 10. 11:06:03

9 A. The polycrystalline material would be many 11:06:07

10 different types or could be different types of 11:06:09

11 materials. It could be polycrystalline diamond. 11:06:11

12 It could be polycrystalline graphite. It could 11:06:13

13 be a combination thereof. So while it refers 11:06:16

14 to -- is referred to as polycrystalline material, 11:06:23

15 I don't know what the partitioning is between 11:06:29

16 polycrystalline diamond and polycrystalline 11:06:32

17 graphite or any other forms of carbon. 11:06:34

18 Q. In the CVD industry and scientific 11:06:40

19 literatures that type of black material that is 11:06:46

20 seen on the outside of growing diamond is 11:06:49

21 typically referred to as polycrystalline diamond 11:06:51

22 material. Is that fair? 11:06:54

23 MR. MOFFA: Objection; form. 11:06:55

24 Objection; foundation. 11:06:56

25 THE WITNESS: In some cases, yes. 11:06:58

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

79

1 BY MR. AIRAN: 11:07:02

2 Q. For example, the case that is shown in 11:07:02
3 your Figure 10? 11:07:03

4 MR. MOFFA: Same objections. 11:07:08

5 THE WITNESS: I would have to refer 11:07:13
6 back to the source. 11:07:13

7 BY MR. AIRAN: 11:07:17

8 Q. In your description of your Figure 10 it 11:07:18
9 says, "The dark region along the edge is a 11:07:19
10 polycrystalline diamond film at end faces." Do 11:07:22
11 you see that? 11:07:26

12 A. Yes. 11:07:27

13 MR. MOFFA: Objection -- sorry. 11:07:29
14 Just let me -- objection; mischaracterizes 11:07:31
15 evidence. Proceed. Just give me a second. 11:07:32

16 BY MR. AIRAN: 11:07:36

17 Q. That material, that dark black material is 11:07:43
18 considered to be polycrystalline diamond film? 11:07:47

19 A. That's what the caption reads, yes. 11:07:52

20 Q. And you accept that? 11:07:54

21 MR. MOFFA: Objection; form. 11:07:58

22 THE WITNESS: I do accept that. 11:08:00

23 BY MR. AIRAN: 11:08:09

24 Q. I am going to move ahead to paragraph 106 11:08:10
25 of your expert report. Let me know when you are 11:08:13

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

82

1 but it could be heat transfer. It can be the 11:11:46
2 nature of the surfaces prior to growth. It could 11:11:53
3 be the flow rates. It could have to do with 11:12:00
4 growth rates. It could have to do with 11:12:06
5 anisotropy in the growth rates associated with 11:12:10
6 surfaces on the sides of the diamond seed and the 11:12:14
7 growing diamond. 11:12:20

8 Q. Okay. Moving ahead in your expert report 11:12:26
9 to the next paragraph, there are several images. 11:12:29
10 I have them up on the screen as well. Let me 11:12:32
11 know when you are there. 11:12:35

12 A. I have them. 11:12:36

13 Q. Is the black material on page 39 11:12:40
14 considered polycrystalline material? 11:12:44

15 A. It could be the combination of 11:13:20
16 polycrystalline material and impurities that I 11:13:22
17 had cited in paragraph 106. 11:13:24

18 Q. Is that black material polycrystalline 11:13:31
19 diamond? 11:13:33

20 MR. MOFFA: Objection; asked and 11:13:35
21 answered. 11:13:36

22 THE WITNESS: I would have to 11:13:38
23 analyze it to see what the relative partitioning 11:13:40
24 is between polycrystalline diamond and any other 11:13:45
25 form of carbon. 11:13:49

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

83

1 BY MR. AIRAN: 11:13:51

2 Q. Would a person of ordinary skill in the 11:13:52
3 art consider that material to be polycrystalline 11:13:54
4 diamond? 11:13:55

5 A. Some would include that to be 11:13:59
6 polycrystalline diamond. Others would include it 11:14:03
7 to be non-diamond carbon. So there is a range 11:14:05
8 of -- there is a range of understanding of what 11:14:13
9 that material is. 11:14:15

10 Q. Let's move to the next page, in paragraph 11:14:20
11 107. And please let me know when you are there. 11:14:22

12 A. I am here. 11:14:33

13 Q. You selected that image for inclusion in 11:14:35
14 your expert report? 11:14:38

15 A. Yes. 11:14:41

16 Q. Why did you do that? 11:14:43

17 A. It shows a block of CVD diamonds. 11:14:46

18 Q. And does it show polycrystalline material 11:14:51
19 on that block? 11:14:53

20 A. There is polycrystalline material on that 11:14:57
21 block that is in part growing around each diamond 11:15:01
22 and that can fuse that together to form the 11:15:11
23 block. 11:15:18

24 Q. Is that polycrystalline diamond material? 11:15:18

25 A. It may be. As I stated a few minutes ago, 11:15:20

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

94

1 **second limitation of claims 1 and 12 below." So** 11:31:06
2 **I am not taking the Court's claim construction of** 11:31:14
3 **these terms in isolation, but they have relevance** 11:31:16
4 **in how they fit back into claim 1 and claim 12.** 11:31:21

5 Q. Do you interpret "growth surface" to 11:31:27
6 include the non-diamond or polycrystalline 11:31:28
7 diamond that grows at the periphery of the 11:31:31
8 single-crystal diamond? 11:31:34

9 MR. MOFFA: Objection; asked and 11:31:37
10 answered. Objection; form. 11:31:38

11 THE WITNESS: Let me turn back to -- 11:31:50
12 let me turn back to 59. You can keep that up on 11:31:51
13 the screen. But the growth surface as defined by 11:31:54
14 the Court and as applied in my report has its 11:32:08
15 plain and ordinary meaning that is the surface 11:32:13
16 upon which diamond growth is occurring. The 11:32:18
17 non-diamond carbon is not included in the growth 11:32:23
18 surface. 11:32:28

19 BY MR. AIRAN: 11:32:31

20 Q. Okay. That's what I am asking. So the 11:32:31
21 statement in paragraph 173 that growth surface 11:32:33
22 does not include the non-diamond or 11:32:38
23 polycrystalline diamond is your opinion in this 11:32:41
24 case? 11:32:45

25 **A. It's not my opinion in this case. It is** 11:32:48

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

96

1 173 that the term "growth surface" does not 11:34:19
2 include non-diamond or polycrystalline diamond 11:34:23
3 that grows at the periphery of the single-crystal 11:34:26
4 diamond? 11:34:29

5 **A. Is that the statement that you have** 11:34:32
6 **highlighted?** 11:34:33

7 Q. Yes. 11:34:35

8 **A. I stand by that.** 11:34:45

9 Q. So polycrystalline diamond is not included 11:34:48
10 in the meaning of the term "growth surface," in 11:34:52
11 your opinion? 11:34:55

12 MR. MOFFA: David, asked and 11:34:56
13 answered. Haven't we asked this question a few 11:34:57
14 times now? 11:35:01

15 MR. AIRAN: You can answer. 11:35:03

16 THE WITNESS: My opinion is that I 11:35:04
17 have no evidence that polycrystalline diamond is 11:35:06
18 pure polycrystalline diamond free of non-diamond 11:35:10
19 carbon or polycrystalline graphite. 11:35:14

20 BY MR. AIRAN: 11:35:19

21 Q. But to be clear, you stand by the opinion 11:35:20
22 in paragraph 173 that the term "growth surface" 11:35:22
23 excludes non-diamond or polycrystalline diamond 11:35:29
24 that grows at the periphery of the single-crystal 11:35:32
25 diamond? 11:35:34

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

108

1 **A. I certainly stand by the first sentence in** 11:54:25
2 **269. And there are qualitative requirements for** 11:54:28
3 **the definition of "insubstantial" that I would** 11:54:47
4 **also not stand by, but not all.** 11:54:50

5 Q. Okay. So I am trying to understand your 11:54:58
6 paragraph 269. Is it correct as written or it is 11:54:59
7 incorrect as written? 11:55:02

8 **A. (Pause) I would change it to** 11:55:37
9 **"quantitative."** 11:55:39

10 Q. So the determination of whether the claim 11:55:42
11 is met by a particular diamond is determined by 11:55:49
12 qualitative analysis; is that correct? 11:55:55

13 **A. It is determined by procedures that one** 11:55:59
14 **would take post-growth.** 11:56:04

15 Q. Okay. So let me break that down a bit. 11:56:09
16 It is possible to determine if a diamond has 11:56:15
17 insubstantial non-monocrystalline growth through 11:56:19
18 a qualitative analysis. Is that fair? 11:56:22

19 **A. It's possible to determine what** 11:56:29
20 **insubstantial and non-monocrystalline growth is** 11:56:31
21 **in terms of what processing post-growth must** 11:56:34
22 **occur.** 11:56:42

23 Q. And that would be done on a qualitative 11:56:44
24 basis as opposed to a quantitative basis? 11:56:47

25 **A. Possibly, yes.** 11:56:57

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

110

1 please. 11:58:42

2 BY MR. AIRAN: 11:58:43

3 Q. Sure. Right before paragraph 269 you 11:58:43

4 state what element 1(b) is. 266 actually. If 11:58:52

5 you look at the heading, Section 3, on page 122 11:58:58

6 of your expert report. 11:59:01

7 **A. Yes.** 11:59:03

8 Q. You refer to single-crystal diamond there. 11:59:04

9 Do you see that? 11:59:07

10 **A. "Fenix infringes the 'growing** 11:59:08

11 **single-crystal diamond'?"? Yes.** 11:59:10

12 Q. Correct. So you list that element 1(b). 11:59:14

13 Do you see that? 11:59:18

14 **A. Yes.** 11:59:19

15 Q. And it is your opinion that element 1(b), 11:59:22

16 growing single-crystal diamond by microwave 11:59:27

17 plasma chemical vapor deposition on the growth 11:59:30

18 surface, is met by processes or is determined by 11:59:32

19 processes that happen after growth? 11:59:41

20 MR. MOFFA: Objection; form. 11:59:44

21 Objection; mischaracterizes testimony. 11:59:48

22 BY MR. AIRAN: 11:59:52

23 Q. Do you understand the question, sir? 11:59:53

24 **A. I do understand the question. If a single** 11:59:54

25 **crystal is a size that meets the growth** 12:00:01

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

111

1 **objective, then the surrounding material, no** 12:00:08
2 **matter how much there is, does not eliminate the** 12:00:16
3 **fact that you have grown a single crystal.** 12:00:23

4 Q. So your opinion is that Nouveau's process 12:00:37
5 meets limitation 1(b) because the single crystal 12:00:42
6 can be cut out from the surrounding 12:00:48
7 polycrystalline and non-monocrystalline material? 12:00:52

8 MR. MOFFA: Objection; form. 12:00:59

9 THE WITNESS: Where do you read the 12:01:02
10 second half of your question? 12:01:03

11 BY MR. AIRAN: 12:01:06

12 Q. I am just asking you for your opinion. 12:01:06

13 **A. Repeat the question, please.** 12:01:10

14 Q. Sure. You understand that the Nouveau 12:01:12
15 process results in single-crystal material that 12:01:14
16 is surrounded by non-monocrystalline material; 12:01:20
17 correct? 12:01:24

18 MR. MOFFA: Objection; foundation. 12:01:26

19 THE WITNESS: Correct. 12:01:29

20 BY MR. AIRAN: 12:01:30

21 Q. And it is your opinion that limitation 12:01:30
22 1(b) is met because the non-monocrystalline 12:01:34
23 material can be cut away from the single-crystal 12:01:39
24 material; is that correct? 12:01:44

25 MR. MOFFA: Objection; 12:01:46

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

115

1 BY MR. AIRAN: 12:05:53

2 Q. And when you are referring to the material 12:05:53
3 that is surrounding the single-crystalline 12:05:56
4 growth, would that be the black material that you 12:05:57
5 can see, for example, in View 8 of the Nouveau 12:05:59
6 affidavit? 12:06:04

7 A. Yes, however that is characterized, which 12:06:08
8 could be polycrystalline diamond, polycrystalline 12:06:12
9 graphite or some combination thereof, including 12:06:16
10 non-diamond carbon. 12:06:20

11 Q. So your view is that that material is not 12:06:22
12 substantial because it can be removed from the 12:06:26
13 material, the single-crystal material? 12:06:29

14 A. It is not substantial because it does not 12:06:33
15 affect the value of the material that is being 12:06:36
16 grown. 12:06:43

17 Q. And by "value," you mean the monetary 12:06:45
18 value? 12:06:48

19 A. Or the end application, yes. 12:06:49

20 Q. So so long as you are able to make a 12:06:56
21 single-crystal diamond that can be used for 12:07:00
22 gemstone, it doesn't matter how much 12:07:02
23 polycrystalline or other non-monocrystalline 12:07:05
24 material surrounds the single-crystal material? 12:07:09

25 MR. MOFFA: Objection; form. 12:07:12

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

116

1 BY MR. AIRAN: 12:07:15

2 Q. Is that correct? 12:07:15

3 A. It is correct to the extent that you can 12:07:20

4 remove that material. It is accepted that there 12:07:23

5 is going to be some of the non-monocrystalline 12:07:26

6 material surrounding the single-crystalline 12:07:32

7 material, but only to the extent that that 12:07:34

8 eliminates or diminishes the value of the grown 12:07:39

9 monocrystalline material would the amount become 12:07:45

10 substantial. 12:07:49

11 Q. So if it eliminates or diminishes the 12:07:54

12 value of the grown monocrystalline material, it 12:07:57

13 would be considered substantial? And by "it," I 12:08:02

14 mean the non-monocrystalline material. 12:08:07

15 MR. MOFFA: Objection; form. 12:08:10

16 THE WITNESS: No, I am not going 12:08:11

17 that far. I would say that it becomes 12:08:12

18 substantial if the growth process would be deemed 12:08:16

19 as a failure, meaning you could not use the 12:08:23

20 single-crystalline material to either form 12:08:31

21 gemstone or to be functional in any other 12:08:33

22 application. 12:08:37

23 BY MR. AIRAN: 12:08:40

24 Q. Got it. So the test for substantiality in 12:08:41

25 insubstantial non-monocrystalline growth, in your 12:08:44

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

180

1 Court's construction. 02:39:16

2 BY MR. AIRAN: 02:39:19

3 Q. I understand that. I am asking you to 02:39:20

4 assume that the Court's construction includes 02:39:21

5 every place where hydrocarbon gases are accruing. 02:39:24

6 Do you understand that? 02:39:29

7 **A. I understand that.** 02:39:30

8 MR. MOFFA: Objection to form. 02:39:31

9 BY MR. AIRAN: 02:39:33

10 Q. So I am asking you to assume that 02:39:33

11 construction. Are you with me? 02:39:35

12 **A. You are asking me to assume a construction** 02:39:38

13 **that is contrary to the Court's order.** 02:39:43

14 Q. I understand that. 02:39:47

15 **A. And for purposes of this deposition,** 02:39:48

16 **that's not what I am going to testify in court,** 02:39:50

17 **so, I mean, it is a hypothetical. I would rather** 02:39:55

18 **not be on the record as saying yes or no to** 02:39:59

19 **something that is outside the Court construction** 02:40:03

20 **order.** 02:40:09

21 Q. So you are not willing to answer a 02:40:10

22 hypothetical question in which the meaning of the 02:40:14

23 term "growth surface" includes the entire surface 02:40:17

24 where hydrocarbon gases are accruing; is that 02:40:22

25 correct? 02:40:25

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

181

1 A. No, I am not willing to include the entire 02:40:25
2 surface upon which hydrocarbon gases are 02:40:31
3 accruing. I think that's contrary to the Court's 02:40:34
4 construction. 02:40:37

5 The ultimate claim, claim 1 and 02:40:39
6 claim 12, refer to growing single-crystalline 02:40:44
7 material. And so fitting the court construction 02:40:47
8 order into those claims to me excludes the 02:40:51
9 non-diamond carbon and the material surrounding 02:41:01
10 the single-crystalline surface. 02:41:03

11 Q. I understand that, Doctor. I understand 02:41:07
12 that that's your opinion. What I am asking you 02:41:09
13 to do as an expert in this case is assume a 02:41:11
14 hypothetical. Do you understand that experts can 02:41:13
15 do that in litigation? 02:41:16

16 MR. MOFFA: Objection to form. 02:41:17

17 THE WITNESS: I understand that. 02:41:19
18 But you understand my reluctance to want to 02:41:20
19 answer that, because it is going to put me on 02:41:24
20 record as saying, well, if this were the case, 02:41:28
21 well, then Capano agrees with it, and I don't 02:41:32
22 agree with it. 02:41:37

23 I strongly believe that the 02:41:38
24 construction from the Court that I have applied 02:41:43
25 in coming up with my opinions is the proper 02:41:47

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

182

1 construction in the application of the Court's 02:41:52
2 order. And so I am hesitant about speculating or 02:41:54
3 hypothesizing what may be the case under a 02:42:03
4 different construction. 02:42:05

5 BY MR. AIRAN: 02:42:07

6 Q. Sure. I understand that. So just so I am 02:42:08
7 clear, you are not willing to accept a 02:42:09
8 construction of growth surface that would include 02:42:11
9 the entire surface upon which hydrocarbon gases 02:42:16
10 are accruing; is that correct? 02:42:20

11 A. I would not accept that. 02:42:22

12 Can I amplify that? 02:42:42

13 Q. Sure. 02:42:44

14 A. The entire surface upon which hydrocarbons 02:42:47
15 are depositing would include in the stage, and so 02:42:49
16 I think that it is certainly not within the 02:42:55
17 spirit of the Court's construction order that one 02:42:58
18 would include the stage as part of the growth 02:43:02
19 surface. 02:43:07

20 Q. Okay. Thank you for that correction. I 02:43:13
21 want to shift gears for a moment before I run out 02:43:19
22 of time at the end of the day. 02:43:21

23 So just to back up for a minute on 02:43:52
24 your amplification, are you willing to exclude 02:43:55
25 the stage and still consider the growth surface 02:43:58

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

275

1 out of time. I thank you, Dr. Capano, for your 05:31:35

2 time today and this afternoon. 05:31:37

3 THE WITNESS: Thank you. 05:31:39

4 MR. MOFFA: I don't have any 05:31:43

5 redirect for Dr. Capano, but I would like 30 days 05:31:44

6 to read and sign. 05:31:47

7 MR. AIRAN: And so we can go off the 05:31:51

8 record. 05:31:52

9 THE VIDEOGRAPHER: This concludes 05:31:55

10 the videotaped deposition of Dr. Michael Capano 05:31:55

11 in the matter of Carnegie Institution of 05:31:59

12 Washington vs. Fenix Diamonds. We are now going 05:32:01

13 off the video record, and the time is 5:32 p.m. 05:32:06

14 - - - 05:32:09

15 (Deposition concluded at 5:32 p.m.) 05:32:10

16 - - - 05:32:12

17 05:32:12

18 05:32:12

19

20

21

22

23

24

25

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com

HIGHLY CONFIDENTIAL

Capano, Michael

October 23, 2020

277

1 ACKNOWLEDGMENT OF DEPONENT 05:32:12

2 05:32:12

3 I, _____, do hereby 05:32:12

4 acknowledge that I have read and examined the 05:32:12

5 foregoing testimony, and the same is a true, correct 05:32:12

6 and complete transcription of the testimony given by 05:32:12

7 me, and any corrections appear on the attached Errata 05:32:12

8 Sheet signed by me. 05:32:12

9 05:32:12

10 _____ 05:32:12

11 (DATE) (SIGNATURE) 05:32:12

12 05:32:12

13 NOTARIZATION (If Required) 05:32:12

14 05:32:12

15 State of _____ 05:32:12

16 County of _____ 05:32:12

17 05:32:12

18 Subscribed and sworn to (or affirmed) before me on

19 this _____ day of _____, 20____, by 05:32:12

20 _____, proved to me on the 05:32:12

21 basis of satisfactory evidence to be the person who 05:32:12

22 appeared before me. 05:32:12

23 05:32:12

24 Signature: _____

25 (Seal) 05:32:12

Henderson Legal Services, Inc.

202-220-4158

www.hendersonlegalservices.com